



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-FD-92-2

### FACTS:

You are the State Ethics Commission's Chief Financial Officer. As such, you supervise the filing with the Commission of statements of financial interests (SFIs) by candidates for public office, public officials, and public employees, as required by G.L. c. 268B, §5.

You are concerned that it is unclear whether a member of a county charter commission must file an SFI, if he or she is appointed by the elected members to fill a vacancy.

### QUESTION:

Must a member of a county charter commission file an SFI, if he or she is appointed by the elected members to fill a vacancy?

### ANSWER:

Yes.

### DISCUSSION:

A county charter commission studies a county's form of government and, if the members consider it appropriate, recommends changes or a new form of county government. G.L. c. 34A, §§8, 11. *See Commission Advisory No. 12 (County Charter Commissions)* (1987). A county charter commission consists of fifteen elected members, chosen by the voters at a state election either in a district or county-wide,<sup>1/</sup> and also includes *ex officio* the three elected county commissioners and the chairman of the county advisory board or their respective designees. G.L. c. 34A, §6(A). The commission's elected members are chosen at the same state election at which the voters decide a ballot question (initiated by the county commissioners, the county advisory board, or a voter petition, *id.* §3) asking whether to establish the county charter commission; the commission members take office if the question passes. *Id.* §4.

If a county charter commission member dies, resigns, or ceases to be a registered voter of the county or district (for district members), or if there is a failure to elect a member (because no candidates ran, or because there was a tie vote), the remaining commission members fill the vacancy by choosing a registered voter of the county or district, respectively. *Id.* §7, second paragraph. The question is whether these members appointed to fill vacancies must file SFIs.

Every "public official"<sup>2/</sup> must file an SFI on or before the last Tuesday in May of the year in which such officials first take office and of each year they hold office, and on or before May 1 of the year after they leave office (unless they serve for fewer than thirty days in that last year). G.L. c. 268B, §5(b). A "public official" is "anyone who holds a public office . . ." *Id.* §1(q). A "public office" includes "any position for which one is . . . chosen at a state election . . ." *Id.* §1(p).

It is clear that county charter commission members (except the *ex officio* members<sup>3/</sup>) are elected at a state election. G.L. c. 34A, §§3-7. *See* G.L. c. 50, §1 (defining "state election" to include "any election at which a . . . county officer . . . is to be chosen by the voters . . ."). Thus, the "position" to which one of these fifteen

commissioners is elected is a “public office.” A member appointed to one of these positions to fill a vacancy clearly holds the same public office as someone elected to the position. Therefore, by the plain statutory language, such an appointed member is a “public official” required to file an SFI. In other words, the statutory scheme is to follow the office, rather than the method by which the official came to hold it.<sup>4/</sup>

This result is consistent with the legislative purpose in enacting G.L. c. 268B, §5. By requiring the filing of SFIs in order to disclose personal financial interests that could influence the discharge of public duties, the Legislature intended to “assur[e] the people of impartiality and honesty of public officials.” *Opinion of the Justices*, 375 Mass. 795, 807 (1978) (quotation and citation omitted). In deciding to require all elected state and county officials to file, the Legislature presumably recognized that, if a position were important enough to be elected, the holder of that position should automatically be among those of whose “impartiality and honesty” the people should be assured. (We note that the capacity to recommend to the Legislature or the voters sweeping changes in the structure of county government certainly is an important power.) But, once the importance of the position is recognized, it should not matter how the position is filled. This supports our conclusion that county charter commission members appointed to fill vacancies must file SFIs, just as their elected counterparts must.<sup>5/</sup>

**DATE AUTHORIZED:** April 13, 1992

<sup>1/</sup>The proportion of district and at-large seats among the fifteen elected members depends on the county’s population. G.L. c. 34A, §6.

<sup>2/</sup>It is clear that county charter commission members appointed to fill vacancies must file SFIs only if they are “public officials.” They are not “public employees,” required to file SFIs by G.L. c. 268B, §5(c), because they “serve without compensation.” G.L. c. 34A, §7, last sentence. *See* G.L. c. 268B, §1(o) (defining “public employee” to exclude, among others, “any person who receives no compensation other than reimbursement for expenses”).

<sup>3/</sup>But the county commissioners, who are *ex officio* members of the county charter commission unless they choose to appoint a designee (*see* G.L. 34A, §6[A], second sentence), are themselves elected at the state election, G.L. c. 34, §4; c. 54, §158, and are thus required to file SFIs as “public officials.” G.L. c. 268B, §1(o), (p), 5(b). (A county commissioner appointed to fill a vacancy under the last paragraph of G.L. c. 54, §144 would also be such a “public official” under this opinion’s analysis.) We recognize that the final *ex officio* member, the chairman of the county advisory board, apparently need not file an SFI, because he is not compensated as a county employee, *see* G.L. c. 35, §28B, hence is not a “public employee.” G.L. c. 268B, §1(o). A designee either of a county commissioner or of the county advisory board chairman would be required to file an SFI if, as might often occur, the designee held a compensated county position designated as a “major policymaking position.” *Id.* §§1(h), (l), (o), 3(j)(11); 930 CMR 2.00. *See Commission Advisory No. 12.*

<sup>4/</sup>Any other result would allow an elected commission member to avoid the SFI filing requirement entirely by resigning and then being appointed by his colleagues to fill the vacancy thus created.

<sup>5/</sup>Because the Commission has not previously given clear advice on this issue, we conclude that our advice should apply only prospectively. Therefore, present county charter commission members who were appointed to fill vacancies must file 1991 SFIs on or before May 26, 1992, but need not file SFIs for previous years.